

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 13th OF FEBRUARY, 2024

MISC. APPEAL No. 3666 of 2007

BETWEEN:-

LAXMI S/O RAMESH, AGE: 10 YEARS, (MINOR) THROUGH NATURAL GUARDIAN FATHER RAMESH S/O GANGARAM HARIJAN, AGE: 35 YEARS, OCCUPATION: LABOUR, ADDRESS: JANKI NAGAR COLONY, TEHSIL AND DISTRICT DHAR (MADHYA PRADESH)

.....APPELLANT / CLAIMANT

(BY SHRI AKSHAY BHONDE – ADVOCATE APPEARING ON BEHALF OF SHRI SANDEEP SHUKLA -ADVOCATE.)

AND

- 1. JAGDISHCHANDRA S/O BHILUJI KHATI, OCCUPATION: DRIVER, ADDRESS: NALCHHA, TEHSIL AND DISTRICT DHAR (MADHYA PRADESH)**
- 2. KAILASH CHANDRA S/O SEWARAM VERMA, VEHICLE OWNER, ADDRESS: BEHIND BHOJ HOSPITAL, DHAR, DISTRICT DHAR (MADHYA PRADESH)**
- 3. THE NEW INDIA INSURANCE COMPANY LIMITED, ADDRESS: INDORE-AHMADABAD ROAD, DHAR (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENT NO.3 – INSURANCE COMPANY BY SHRI MAYANK UPADHAYAY – ADVOCATE.)

Heard and reserved on: 29.01.2024

Award passed on: 13.02.2024

This appeal coming on for final orders this day, the Court passed the

following:

AWARD

The appellant – claimant has filed this appeal under Section 173 (1) of the Motor Vehicles Act, 1988 challenging award dated 30.08.2007 passed in Claim Case No.95 of 2006 by Learned 4th Member, Motor Accident Claims Tribunal, Dhar, District Dhar (M.P.), whereby the claim case has been dismissed.

2. In short, the facts of the case are, as under: -

2.1 Laxmi D/o Ramesh, aged about 10 years, on 13.12.2003 near about 04:00 to 04:15 P.M. was going to collect timber woods for cooking the food. She was walking on the side of the road. Jagdish Chandra S/o Bhiluji Khati while driving motorcycle bearing registration number MP-11 AA-304 rashly and negligently dashed Laxmi. She sustained fracture below the left knee and above heel. She was admitted in Bhoj Hospital, Dhar. The accident was reported to the Police Station Dhar, District Dhar (M.P.). A criminal case was registered against Jagdish Chandra S/o Bhilju Khati at Crime No.638 of 2004 dated 14.12.2003.

2.2 Since Laxmi was minor (at the time of accident), therefore, through guardianship of her father Ramesh, she filed a claim case, claiming an amount of

Rs.20,00,000/- (rupees twenty lakhs only) as compensation from the respondents.

2.3 According to the claimant, she was admitted in Bhoj Hospital, Dhar from 13.12.2003 to 29.12.2003. Thereafter, she was referred to Verma Union Hospital at Indore for further treatment. She spent an amount of Rs.30,000/- to Rs.40,000/- for treatment and in future further an amount of Rs.50,000/- to Rs.60,000/- is likely to be incurred for her treatment. Due to the injuries and disablement, she left the school-education and left hand and leg have suffered the deformity. She would suffer memory loss in future and now she will have to lead the life of a handicapped person. Since the accident was caused by respondent No.1 rashly and negligently and the said motorcycle is owned by respondent No.2 and insured by respondent No.3, therefore, all three are jointly and severally liable to pay compensation.

3. Respondents No.1 and 2 filed a reply opposing the accident as well as claim. They have pleaded that their vehicle has been falsely implicated in this case.

4. Respondent No.3 filed a written statement by submitting that no accident was caused by vehicle "TVS XL" bearing registration number MP-11 AA-304, whereas the accident was caused by "TVS Champ" bearing registration number MP-11 BO-304 mentioned in the FIR. Hence, the claim case is liable to be

rejected.

5. Learned Motor Accident Claims Tribunal framed five issues for adjudication. While recording Issue No.2, the Tribunal has assessed 25% permanent disability sustained by Laxmi, and for which, a total compensation of Rs.25,000/- (rupees twenty five thousand only) has been assessed, but the claim has been rejected on the ground that the accident was not caused by respondent No.1 from vehicle MP-11 AA-304. Hence, this appeal before this Court.

6. I have heard learned counsel for the parties and perused the record as well as the impugned award.

7. In the present case, the accident took place on 13.12.2003. After the accident, the accident was reported to the Police. First Information Report (FIR) was registered at Crime No.689 of 2003 on 14.12.2003 in which it was disclosed that the accident was caused by vehicle "TVS Champ" MP-11 BO-304. The Police started the investigation and found that the accident was actually caused by motorcycle TVS XL bearing registration number "MP-11 AA-304" owned by respondent No.2 and driven by respondent No.1. Jagdish Chandra S/o Bhiluji Khati was arrested on 04.08.2004. Pre-MLC was also carried out on 13.12.2003, which confirmed that the injuries sustained by Laxmi were caused by road

accident. The Investigating Officer (I.O.) also collected the Insurance Policy (Ex. P/7) and after completing the investigation, charge sheet was filed under Sections 278, 337 and 338 of Indian Penal Code, 1860, in which the number of the offending vehicle was disclosed as “TVS XL” bearing registration number “MP-11 AA-304”.

8. None of the respondents disclosed the status of the criminal case as to whether Jagdish Chandra S/o Bhiluji Khati has been acquitted on the ground that he did not cause any accident from his motorcycle bearing registration number “MP-11 AA-304”. The accident was caused to a ten years aged girl, who sustained grievous fractures, therefore, it was not expected from her to give the correct description of the motorcycle and the number. The model and the vehicle number disclosed in the FIR and involved in the case are, as under: -

Vehicle Model	Vehicle Number	Remark
TVS XL	MP-11 AA-304	Disclosed in charge sheet & claim
TVS CHAMP	MP-11 BO-304	Disclosed in FIR

There are similarities between above two vehicles, as both are ‘TVS’ and its registration number is also the same i.e. ‘MP-11’ and ‘304’, therefore, there could be a confusion or mistake in recording the number and model of the motorcycle.

9. The claimant examined Ajay S/o Kanhaiyalal as PW-2, who witnessed the

accident. According to him, the number of the offending motorcycle was “MP-11 AA-304”. He immediately took the injured to her house and thereafter to the Hospital along with her father. He was called by the Police after 4-5 days and he disclosed the number of the offending vehicle. According to him, he disclosed the number of the vehicle as “MP-11 AA-304”.

10. Shri Mayank Upadhyaya, learned counsel appearing for respondent No.3 – Insurance Company submits that there was collusion between the claimant and the owner of the vehicle, therefore, the vehicle, which was insured with the Insurance Company, has been mentioned in the claim case in order to get the claim. The aforesaid objection is not tenable. Had there been a collusion between them, the owner and the claimant, the respondents No.1 and 2 would have accepted the claim before the Motor Accident Claims Tribunal, but in this case, they denied the accident from their vehicle.

11. As it is apparent from the aforesaid number and make of the vehicle, there are similarities between the number and the model, therefore, there could be a confusion / mistake in recording the number. Normally people cannot differentiate between two different models of the motorcycles manufactured by one company and all the models are commonly known by Hero Honda, TVS, Yamaha etc. Therefore, it cannot be said that the accident was not caused by the offending

vehicle TVS Champ “MP-11 AA-304”. The claim has wrongly been rejected, because partially wrong number was disclosed in the FIR, but after investigation, the Police found that the accident was caused by vehicle number “MP-11 AA-304” and there is no reason to doubt on the investigation conducted by the Police.

12. Some times, an FIR is lodged against unknown persons, but in investigation the Police finds the real culprit and files charge sheet against him. Therefore, although the make and number of the offending vehicle were wrongly recorded in the FIR, the entire claim has wrongly been rejected on that basis, without considering the final charge sheet filed by the Police.

13. Hence, the present appeal is allowed. The amount of Rs.25,000/- (rupees twenty five thousand only) as assessed by the Claims Tribunal be paid to the claimant along with interest @ 6% per annum from the date of filing of the claim case before the Motor Accident Claims Tribunal till the date of realization.

Record be sent back to MACT.

(VIVEK RUSIA)
JUDGE

rcp